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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF UTAH

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UTAH INSURANCE DEPARTMENT,  
  
Complainant,

vs.

KEN GARFF INSURANCE AGENCY,  
LLC,

Respondent.

AMENDED FINDINGS OF FACT,  
AMENDED CONCLUSIONS OF LAW  
AND AMENDED ORDER

Docket No. 2016-014PC  
Enforcement No. 3718

Gregory Soderberg, JD  
Presiding Officer

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Complainant Utah Insurance Department (“the Department”) and Respondent Ken Garff Insurance Agency, LLC (“Garff”) have stipulated to entry of the following Amended Findings of Fact, Amended Conclusions of Law, and Amended Order. Based on that stipulation, and good cause appearing, the Presiding Officer makes and enters the following:

**Amended Findings of Fact**

1. Garff is a Utah-licensed insurance agency.

2. Garff designated 12 individuals as individual producers to do business for it in the state of Utah.

3. Of the 12 individual producer designations, Garff reported only two of the designations to the Utah Insurance Commissioner.

4. During 2013, 2014 and 2015, one of Garff's individual producers added Schedule Personal Property ("SPP") coverage to approximately 1,048 homeowner policies issued by Allstate Insurance Company. The producer intentionally added the SPP coverage with the knowledge that many of the insureds had not approved that coverage.

5. The added SPP coverage was duplicative in most but not all cases and was not authorized by the insureds in most but not all cases.

6. The producer was able to add the SPP coverage due in part to negligent supervision by Garff during 2013, 2014, and 2015.

7. The producer was also able to add the SPP coverage due in part to Allstate Insurance Company's policies and procedures for ordering new homeowner policies which permitted the duplicative coverage.

8. After obtaining actual knowledge of this intentional and knowing misconduct, Garff terminated the producer's employment and took steps to end the practice of adding duplicative SPP coverage.

### **Amended Conclusions of Law**

1. The Utah Insurance Commissioner has jurisdiction over Garff and the subject matter of this proceeding pursuant to Utah Code §§ 31A-1-105, 31A-2-201 and 31A-2-308.

2. These Conclusions of Law are divided into two categories, one for Garff's failure to report designated agents, and the other for Garff's negligent supervision of its individual producer.

#### **Failure to Report**

3. As a Utah-licensed insurance agency, Garff must designate individual producers who are authorized to do business for Garff in Utah. Utah Code § 31A-23a-302(1).

4. Garff must report the names of its designated individual producers to the Utah Insurance Commissioner. Utah Code § 31A-23a-302(2).

5. Garff violated the reporting statute by designating 12 individual producers but reporting the names of only two of them to the Commissioner.

6. Based on those violations of the reporting statute, Garff should be ordered to pay \$1,000 per violation, or \$10,000, as a penalty for its misconduct. Utah Code § 31A-2-308(1)(b).

#### **Negligent Supervision**

7. Garff had a duty to supervise its designated individual producer in a non-negligent manner.

8. Garff breached this duty of supervision during 2013, 2014 and 2015.

9. Garff's negligent supervision was, along with other factors, a cause of the improper addition of SPP coverage to approximately 1,048 homeowner policies.

10. According to Utah Code §31A-23a-302(7)(b):

If an individual designated under the agency license commits an act or fails to perform a duty that is a ground for suspending, revoking, or limiting the agency license, the commissioner may suspend, revoke, or limit the license of:

(i) the individual;

(ii) the agency, if the agency:

(A) is reckless or negligent in its supervision of the individual....

11. This statute grants the Utah Insurance Commissioner implicit authority, depending on the existence of factors that may mitigate an agency's negligent supervision, to impose penalties less severe than suspension, revocation, or limitation of an agency license.

12. Garff's negligent supervision is mitigated by the following: (1) Allstate Insurance Company's business operations allowed the producer to add the duplicative SPP coverage; (2) After obtaining actual knowledge of the misconduct, Garff terminated the producer and took steps to prevent the misconduct from occurring in the future.

13. Based on the facts of this case, Garff should be ordered to pay \$5,000 as a penalty for its negligent supervision. Utah Code §§ 31A-2-308(1)(b); 31A-23a-302(7)(b).

#### **Amended Order**

Based on the foregoing Amended Findings of Fact and Amended Conclusions of Law, it is ordered:

1. Garff shall pay a penalty of \$10,000 for its failure to report designated individual producers to the Utah Insurance Commissioner.

2. Garff shall pay a penalty of \$5,000 for negligently supervising its designated individual producer .

3. The penalties have been paid.

DATED this 1st day of June, 2016.

TODD E. KISER  
Utah Insurance Commissioner



GREGORY SODERBERG  
Presiding Officer  
Administrative Law Judge  
Utah Insurance Department


**NOTICE TO RESPONDENT**

You are hereby notified that a failure to obey an Order of the Commissioner may subject you to further penalties, including forfeitures of up to \$5,000 per violation and the suspension or revocation of your license and the filing of an action in district court, which may impose forfeitures of up to \$10,000 per day for continued violation. You are further notified that other jurisdictions in which you may be licensed may require that you report this action to them.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a true and correct copy of the foregoing AMENDED FINDINGS OF FACT, AMENDED CONCLUSIONS OF LAW AND AMENDED ORDER was <sup>emailed</sup> ~~mailed, postage prepaid,~~ to the following: Randall Smart, ~~5220 South 900 East, # 120, Salt Lake City, UT 84117.~~ randysmart@utahlaw-smart.com

Dated this 1st day of June, 2016.

  
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~~LINDA HARDY~~ Gregory Soderberg  
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